



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/407,651	09/28/99	ROGERS	R 696-P-4

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MMC2/0126

EXAMINER

HIRSHFELD, A

ART UNIT

PAPER NUMBER

2859

DATE MAILED: 01/26/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/407,651**

Applicant(s)  
**ROGERS et al.**

Examiner  
**Andrew Hirshfeld**

Group Art Unit  
**2859**



- ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

- ☒ Claim(s) 1-12 is/are pending in the application.
- Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-12 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☒ The drawing(s) filed on Sep 28, 1999 is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☒ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- ☒ Notice of References Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## DETAILED ACTION

### *Information Disclosure Statement*

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### *Drawings*

2. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference signs mentioned in the description: "line 5-5" (see page 5, line 12); and "51" (see page 7, line 19). Correction is required.

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4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "50" (see figure 1) has been used to designate both the flag and the flag pole. Correction is required.

5. Applicant is required to submit a proposed drawing correction in reply to this Office action. However, formal correction of the noted defect can be deferred until the application is allowed by the examiner.

#### ***Specification***

6. The disclosure is objected to because of the following informalities:

On page 5: In line 10, the reference to "cone" with regard to figure 4 contradicts applicant's description of the invention, which states that the conical body is shown in figure 8 and not the embodiment of figure 4.

On page 6: In line 17, "30" should be replaced with --34-- since the receptacle "30" is not arcuate. In line 18, "34" should be replaced with --30-- since the receptacle "34" is not rectangular.

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On page 8: in line 5, "16" should be replaced with --10-- to properly refer to the "markers".

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 5: It is not clear whether the "plurality of receptacles" include the receptacle introduced in claim 1 (ie. a total of three receptacles are claimed), or are in addition to the receptacle introduced in claim 1 (ie. a total of four receptacles are claimed). Perhaps claim 5 should be amended to state "wherein the at least one receptacle is a plurality of receptacles including a receptacle having a circular cross section, a receptacle having an arcuate cross section, and a receptacle having a rectangular cross section".

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*Claim Rejections - 35 USC § 102*

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1,3 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Ryan.

Ryan teaches a location marker having a generally upwardly converging body 16 in the form of a truncated cone. The body includes a lower base (bottom portion of the body) and an upper generally planar top surface. A plurality of receptacles are within the planar top surface of the body. The receptacles labeled 35 are circular (and therefore also arcuate) and the post receiving receptacle may be rectangular as shown in figure 15.

11. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Walker.

Walker teaches a location marker having a generally upwardly converging body 38 in the form of a truncated pyramid. The body

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includes a lower base (bottom portion of the body) and an upper generally planar top surface. An arcuate receptacle is positioned within the planar top surface of the body for receiving a traffic direction wand. The wand may be made of a bright color and the reflective material is considered to be "identifying indicia" since it identifies a location to an onlooker.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly

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owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

13. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of Ryan.

Walker teaches all that is claimed, as discussed in the above rejection of claims 1 and 2, except for the body being in the form of a truncated cone.

Ryan teaches a guide post having an upwardly converging body in the form of a truncated cone. A reflective member is attached to the body.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Walker by changing the shape of the body from a truncated pyramid to a truncated cone, since Ryan teaches that the use of truncated cones as a support member is old and well known in the art.

14. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of Latimer.



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Walker teaches all that is claimed, as discussed in the above rejection of claims 1 and 2, except for the body 38 being hollow and being made from molded plastic.

Latimer teaches a sign having a support member that is hollow and is molded from a plastic material.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Walker by making the body hollow and from molded plastic, since Latimer teaches that such is beneficial for minimizing the weight of the body.

15. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of Anderson and Getsinger.

Walker teaches all that is claimed, as discussed in the above rejection of claims 1 and 2, except for the top surface of the body defining receptacles that are circular and rectangular in cross section.

Anderson teaches a sign holding device wherein a support includes circular receptacles for 25 and 26 for receiving "additional attracting means" such as flag assemblies.

Getsinger teaches a flag holder having rectangular openings for receiving poles of flag assemblies.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Walker by including a plurality of receptacles in the top surface of the body, for the purpose of providing "additional attracting means" as taught by Anderson. To make these receptacles both circular and rectangular would have been obvious, since Anderson and Getsinger teach that these shapes are commonly used to receive poles or masts for display. The choice of shape for the receptacles is merely a choice of design dependent upon which flag assemblies are to be used.

16. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of Dailey et al.

Walker teaches all that is claimed, as discussed in the above rejection of claims 1 and 2, except for the body including clip means.

Dailey et al. teaches a marker having clip means 36,38 attached thereto for holding a card 40. The card 40 can have a logo or other promotional or special message thereon.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Walker by including a clip means on the device thereof, for the purpose of

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permitting an advertising message or the like to be displayed as taught by Dailey et al. To position the clip on the body would have been obvious as a design choice, since such amounts to the mere changing of the location of parts.

17. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of Yen.

Walker teaches all that is claimed, as discussed in the above rejection of claims 1 and 2, except for the base including a magnet.

Yen teaches a warning sign having a base with a magnet. This arrangement permits the sign to be used alternatively on a ground surface or on a vehicle.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Walker by including a magnet on the base, since Yen teaches that such a modification would make the device more versatile by enabling it to be used on a vehicle as well as on a ground surface.

18. Claims 8, 9, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of Latimer and Anderson.

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Walker teaches all that is claimed, as discussed in the above rejection of claims 1 and 2, except for the body being hollow and the top surface defining a plurality of receptacles.

Latimer teaches a sign having a support member that is hollow.

Anderson teaches a sign holding device wherein a support includes circular receptacles for 25 and 26 for receiving "additional attracting means" such as flag assemblies.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Walker by making the body hollow, since Latimer teaches that such is beneficial for minimizing the weight of the body.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Walker by including a plurality of receptacles in the top surface of the body, for the purpose of providing "additional attracting means" as taught by Anderson.

Applicant should note that since the flare and the warning flag are not being positively claimed, any shaped receptacles are considered to be "shaped to support the base of a flare and the standard of a warning flag".

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19. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of Latimer and Anderson as applied to claims 8,9,11 and 12 above, and further in view of Ryan.

Walker, Latimer and Anderson together teach all that is claimed, as discussed in the above rejection of claims 8,9,11 and 12, except for the body being generally conical.

Ryan teaches a guide post having an upwardly converging body in the form of a truncated cone. A reflective member is attached to the body.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify Walker by changing the shape of the body from a truncated pyramid to a truncated cone, since Ryan teaches that the use of truncated cones as a support member is old and well known in the art.

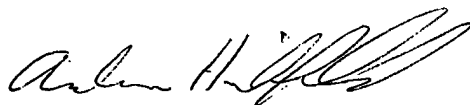
#### ***Conclusion***

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Andrew Hirshfeld whose telephone number is (703) 305-6619.

Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist whose telephone number is (703) 308-0956.



Andrew Hirshfeld  
Primary Examiner  
Art Unit 2859  
January 19, 2001